

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216893, B-216908

DATE: March 4, 1985

MATTER OF: Environmental Science and Services
Corporation; NHC Wind Engineering

DIGEST:

1. Protest alleging that awardee's proposal to use a leased wind tunnel did not conform to solicitation is denied, since solicitation required only that wind tunnel facilities be available to offerors.
2. Protest challenging agency's evaluation of protester's and awardee's proposals is denied where protester failed to support its contentions that agency's evaluation of its wind tunnel facilities and staffing proposal lacked a reasonable basis, and, in any event, agency found protester's proposal inferior to awardee's on numerous other grounds not challenged by protester.
3. Agency's decision to award contract to higher-cost offeror is reasonable where cost difference between offers was modest and agency found that the technical superiority of awardee's proposal justified award at higher estimated cost.

Environmental Science and Services Corporation (ESSCO) and NHC Wind Engineering protest the award of a contract to Technology Integration and Development Group, Inc. (TIDG), under request for proposals (RFP) No. DTFH61-84-R-00080, issued by the Federal Highway Administration for a cost-type contract for a research study related to highway air pollution. ESSCO contends that the agency improperly evaluated certain aspects of

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both its and the awardee's technical proposals. NHC contends both that TIDG's proposal did not satisfy an alleged requirement in the RFP that offerors own a wind tunnel, and that the procurement was biased in favor of TIDG. We deny both protests.

The RFP, issued as a small business set-aside, called for offerors to conduct a study entitled "Modification of Highway Air Pollution Models for Complex Terrain and Site Geometry." The purpose of the study is to develop a new model dealing with air quality evaluations for complex terrain and road locations. The RFP listed six tasks to be performed by the contractor involving extensive use of atmospheric wind tunnel tests. The offerors were to furnish all facilities, materials and personnel necessary to produce the study. Offers were to include a technical proposal, staffing proposal, and cost proposal.

The agency received proposals from six offerors, of which five were found technically acceptable. The initial proposals submitted by TIDG, ESSCO, and NHC received technical scores of 80, 80, and 79, respectively. After discussions were conducted, the offerors submitted their best and final offers, which then were evaluated by the agency. ESSCO's final offer contained a cost estimate of \$209,560, TIDG proposed an estimate of \$231,319 and NHC proposed \$238,484. The agency concluded that ESSCO's final proposal was significantly inferior to its initial proposal due to changes ESSCO made in the technical, staffing, and cost components. In comparison, TIDG was found to have maintained the quality of its initial proposal, and based on its overall technical superiority, the agency concluded that award should be made to TIDG even though its cost estimate was not low.

(1) Wind Tunnel evaluation

(a) NHC's contentions

The study called for by the solicitation required extensive use of wind tunnel facilities. The awardee, TIDG, proposed leasing a wind tunnel for use in the

project. NHC argues that the solicitation required offerors to own the wind tunnel they would be using, and thus concludes that TIDG's offer to perform using a leased wind tunnel should have been rejected.

NHC also contends that TIDG had an unfair advantage over NHC and other offerors which own wind tunnels because it does not have to bear the costs associated with ownership. NHC argues that, in light of this alleged cost advantage, the award to TIDG was contrary to the purpose of conducting the procurement as a small business set-aside.

As support for its contention that the solicitation required offerors to own the wind tunnel they proposed to use, NHC relies on the following provision in part IV, section L of the RFP:

"NOTE: The offeror must have existing appropriate atmosphere wind tunnel with needed wind controls, geometric forms, and means to release and measure tracer gas concentrations for steady state operation."

The agency states that it did not intend to limit the competition to offerors that own wind tunnel facilities, and in our view this provision does not require ownership. Rather, as the agency reports, the provision requires only that offerors have available to them the wind tunnel facilities necessary to perform the work required. Similarly, we see no reason why the fact that the procurement was conducted as a small business set-aside would obligate the agency to require offerors to own a wind tunnel, or to favor those offerors owning wind tunnels.

(b) ESSCO's contentions

As discussed more specifically below, the gist of ESSCO's protest is that the agency improperly evaluated the technical merit of its and TIDG's proposals, with ESSCO's proposal being rated too low and TIDG's too high. Review by our Office of such a challenge to an

agency's technical evaluation is of limited scope. Our function is not to reevaluate the proposals and make our own determination as to their relative merits; rather, that function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Foley Company, B-212378.7, Feb. 13, 1984, 84-1 CPD ¶ 178. In evaluating proposals, contracting officials enjoy a reasonable range of discretion in determining which offer should be accepted for award, and their determination will not be questioned by our Office unless there is a clear showing of unreasonableness, an abuse of discretion, or a violation of the procurement statutes and regulations. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD ¶ 44.

The agency concluded that the wind tunnels proposed to be used by TIDG and ESSCO were equivalent; ESSCO contends that its wind tunnel is superior to TIDG's. The only evidence ESSCO offers to support its contention is its general assertion that owning a wind tunnel, as ESSCO does, is superior to leasing one, as TIDG proposed, due to the greater degree of control over a wind tunnel's operations which, ESSCO argues, only an owner enjoys. In our view, however, control over a wind tunnel's operations does not belong only to the owner of the wind tunnel; to the contrary, ESSCO has not shown why an offeror like TIDG, which leases a wind tunnel, would have less control than an owner over the tunnel's operations for the period of its lease. Consequently, we see no reason to question the evaluators' judgment in this matter.

ESSCO also asks that we discuss the relative merits of the two wind tunnels with certain technical experts, implying that they will support ESSCO's position that TIDG's wind tunnel is inferior. It is not our practice, however, to conduct such an investigation pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Austin Company, Advanced Technology Systems, B-212792, Mar. 1, 1984, 84-1 CPD ¶ 257.

ESSCO further contends that TIDG's wind tunnel described in its proposal was not in fact operational at the time proposals were submitted and that, as of the time of award, the facility did not meet certain technical requirements of the RFP, and thus will not perform as required. Here, ESSCO does not appear to question the agency's relative assessment of the merits of TIDG's proposal but contests the agency's determination, made after proposal evaluation, that TIDG actually has the capacity to perform in accordance with the RFP specifications. See Delta Data Systems Corp., B-213396, Apr. 17, 1984, 84-1 CPD ¶ 430. This pertains to the agency's affirmative determination of TIDG's responsibility. Our Office does not review such determinations except where there is a showing of possible fraud on the part of the contracting officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. E.g., Gillette Industries, Inc., B-205476.2, Jan. 5, 1982, 82-1 CPD ¶ 13. ESSCO does not argue that either of these exceptions applies here. In addition, whether TIDG actually will perform in accordance with the RFP is a matter of contract administration which is the responsibility of the contracting agency, and is not considered under our bid protest procedures. E.g., Decision Sciences Corp., B-205582, Jan. 19, 1982, 82-1 CPD ¶ 45.

(2) Agency evaluation of final proposals

The agency concluded that the principal technical experts named in TIDG's proposal were equivalent to those proposed by ESSCO, while TIDG's support staff was found to be considerably better than ESSCO's. ESSCO contends, however, that TIDG's professional team is inferior to ESSCO's team because TIDG is a new company consisting of a prime contractor and three subcontractors. In the absence of any evidence in the record to support ESSCO's speculation that TIDG's status as a newly-formed business entity affected the quality of its proposed staff, we see no reason to question the agency's evaluation of TIDG's professional team.

ESSCO next contends that when the agency reevaluated its proposal on the basis of its best and final offer, the agency improperly lowered its rating based on a reduction in the number of work hours ESSCO proposed to dedicate to the project. ESSCO maintains that its technical rating should not have been lowered because the reduction in work hours was not significant--from 3240 to 3196 hours, a total of 44 hours.

The record shows, however, that ESSCO's elimination of 44 staff hours was not the principal reason for the lowered rating of its staffing proposal. Rather, ESSCO's final staffing proposal was downgraded primarily because ESSCO changed the distribution of total work hours among its staff members, most significantly by limiting the role of key technical experts whose proposed participation had accounted for the higher rating given to ESSCO's initial proposal. Thus, the agency based its reevaluation of ESSCO's final staffing proposal more on the qualitative change in its proposed staffing than on the reduction in the number of total hours, as ESSCO contends.

ESSCO also argues that, in computing the total hours offered, the agency should have included 700 work hours ESSCO says it expended in developing certain experimental computer models and data bases included at no cost as part of ESSCO's proposal. The agency states that, although it considered the models and data bases as evidence of ESSCO's general experience and knowledge in the field, it lacked sufficient familiarity with ESSCO's efforts to develop the models and data bases to assign them a specific dollar or work hour value. While the agency properly considered the models and data bases when assessing ESSCO's general technical expertise, we find nothing in the solicitation which would further obligate the agency to calculate the number of hours spent in developing them.

In any event, the agency's downgrading of ESSCO's final proposal was based not only on the number of work hours and other features of its staffing proposal, but also on a reduction in the amount of wind tunnel time proposed by ESSCO and the elimination of any costs for computer usage, both critical elements in performing the requested work. ESSCO does not challenge the agency's assessment of these features of its best and final offer. Thus, in addition to having failed to

support its specific contention that its staffing proposal was improperly evaluated, we find that ESSCO clearly has failed to show that the agency's evaluation of its proposal as a whole lacked a reasonable basis.

Finally, ESSCO maintains that it should have been selected for award because it proposed a lower estimated cost than did TIDG. There is no requirement that an agency award a cost-type contract on the basis of the lowest proposed cost. Talley Educational Services, Inc., B-211936, Feb. 14, 1984, 84-1 CPD ¶ 188. Rather, as in any negotiated procurement, award of a contract need not be made to the offeror proposing the lowest cost unless required by the solicitation. SISA Pharmaceutical Laboratories, Inc., B-214314, Dec. 3, 1984, 84-2 CPD ¶ 595. Procurement officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Columbia Research Corp., 61 Comp. Gen. 194 (1982), 82-1 CPD ¶ 8. An agency may make cost versus technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 25. The determining element is the considered judgment of the procurement officials concerning the significance of the difference in technical merit among the offerors. Columbia Research Corp. supra. This Office will question that judgment only upon a clear showing of unreasonableness. American Coalition of Citizens with Disabilities, Inc., B-205191, Apr. 6, 1982, 82-1 CPD ¶ 318.

Here, the RFP provided only that relative costs would be considered in addition to the technical evaluation criteria. As discussed in detail above, the agency found TIDG's final proposal technically superior to ESSCO's in numerous respects. The record also shows that, in evaluating the two proposals, the agency considered the relative costs of ESSCO's and TIDG's proposals and concluded that the technical merit of TIDG's proposal justified award at TIDG's higher estimated cost. In view of TIDG's technical superiority and the relatively modest cost differential between the two offers (\$21,759), we find no basis on which to question the agency's selection of TIDG's proposal.

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(3) Alleged bias in favor of TIDG

NHC contends that the procurement was biased in favor of TIDG. In support of this contention, NHC states that, after it received the RFP, it "heard" that one of TIDG's subcontractors, Environmental Research and Technology (ERT), had helped write the specifications in the RFP. NHC also states that it learned that the wind-tunnel being leased by TIDG had been donated to Boston University after the solicitation was issued, by a company associated with a member of TIDG's professional team. NHC maintains that ERT's alleged participation in drafting the specifications, and the fact that the timing of the solicitation and award coincided with donation of the wind tunnel to Boston University, indicate that award to TIDG was predetermined.

We find NHC's allegations to be without merit. The protester has the burden of affirmatively proving bias on behalf of the contracting agency; unsupported allegations do not satisfy this burden. E.g., J.L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 CPD ¶ 99. Here, the agency states that ERT did not participate in drafting the specifications as NHC contends. NHC offers no evidence to the contrary beyond its bare allegation, admittedly based on hearsay, that ERT did participate in the drafting. Further, there is no indication of agency participation or interest in the donation of the wind tunnel subsequently leased by TIDG, and we fail to see how the fact that the donation of the tunnel took place between issuance of the RFP and award to TIDG possibly could indicate bias on the agency's part.

The protests are denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel